Pages

4 C. J. S., Section 1377 40
California Irrigation District Act of 1897, Cal. Stats. 1897, p. 254 2
California Wright Act of 1897 14
Constitution of the State of California:
Article I, Section 16 ..... 28, 30, 33
Article IV, Section 31 ..... 28, 30
Constitution of the United States, Article I, Section 10 .... 30, 33
43 Corpus Juris, p. 211 28
44 Corp. Jur. 1237-8 29

Federal Income Tax Laws, 72 Op. A. G. 38 36

Judicial Code, Section 240(a) 2

Stats. 1939, Chap. 72 33

The Federalist, No. XXXIII 29

11 U.S.C.A. 301-304 30
11 U.S.C.A. 403 30
11 U.S.C.A. 410-404 (52 Stat. 940) 2
28 U.S.C.A. 347(a) 2
28 U.S.C. 41(1), sub. (3) 3
University of Pennsylvania Law Review, Vol. 90, No. 5 25

Subject Index

	Page
Opinions Below	2
Jurisdiction	2
States Involved	2
Summary and Short Statement of the Matter Involved	3
Questions Presented	8
Specification of Errors to Be Urged	9
Reasons Relied on for Allowance of Writ	10
I. Factual background of the case	13
Argument	23
II. The court of appeals erred in sustaining the final decree because the bonds owned by petitioner are original, unrefunded bonds which the plan affects more adversely than the refunded bonds which formed the base for the consents to the 1939 plan of composition	23
III. Creditor consent requisite for every step in Chapter IX proceedings expired before motion for final decree was filed, because the refunding bonds upon which the consent existed were retired and cancelled before that date	25
IV. The court erred in entering the final decree because it has no summary jurisdiction to deal with a controversy to state property of which the court has neither actual nor constructive possession	26
V. The legislature of a state can not, after executing a trust conferred on it by the Constitution, and after borrowing money upon the pledge to repay the money in conformity with the law, subsequently repudiate its contracts nor consent for the federal government to order the contracts annulled without violating Article I, Section 10 of the Federal, and Article I, Section 16 of the California Constitution	30
VI. The final decree, as applied, deprives petitioner of a vested right to compel the annual levy of taxes upon	

Page

the value of land, as required by law and state decisions, and abrogates the contract in his tax-secured bonds in violation of the 5th and 14th Amendments to the Federal Constitution 33

VII. Whether the death sentence and restraints in the final decree are repugnant to the Federal and State Constitutions 35

Conclusion 39

Table of Authorities Cited

Cases	Pages
Anderson-Cottonwood I. D. v. Klukkert, 13 Cal. (2) 191	21, 27
Anderson-Cottonwood I. D. v. Zinzer, 51 C. A. 582	21
Ashton v. Cameron County, 298 U. S. 513	3
Bates v. Gregory, 89 Cal. 387 (1891)	31
Bd. of Supervisors v. Thompson, 122 Fed. 860	33
Brown v. Gerdes, decided February 7, 1944	34
Brush v. Comm., 300 U. S. 352	3, 10
Cargile v. N. Y. Trust Co., 67 F. (2) 585	28
City of Cincinnati v. Seasongood, 46 O. St. 296, 21 N. E. 630	32
Commissioner of Corporations and Taxation, 54 N. E. (2) 43	34
El Camino L. C. v. El Camino I. D., 12 Cal. (2) 378	27
Enterprise v. State, 156 Ore. 623	32
Ex parte Ayers, 123 U. S. 443	28
Ex parte Virginia, 100 U. S. 339	33
Faitoute v. Asbury Park, 316 U. S. 502	10, 31
Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112	14, 33
Fallbrook P. U. Dist. v. Cowan, 131 F(2) 513	5, 21
Green v. Stuart, 135 F(2) 33	25
Heine v. Board, 19 Wall. (86 U.S.) 665	31
Herring v. Modesto I. D., 95 Fed. 705	15, 33
Huddleston v. Dwyer, 322 U. S. 232	34
Hunter v. Rector of St. Ann's Chapel, 137 So. 850, 173 La. 454	40
Imperial Land Co. v. Imperial I. D., 173 Cal. 660	33
In re C. M. & St. P. & P. R. Co., 138 F(2) 235	24
In re Town of Deerfield Beach, Fla., 55 F. Supp. 761	6
Keys v. Mother Lode Ext. Mines, 212 Cal. 612, 299 Pac. 524	40
Layton v. Thayne, 144 F(2) 94	27
Leco Prop. v. Crummer, 128 F(2) 110	25
Louisiana v. New Orleans, 102 U. S. 203	32

Pages

Mason v. El Dorado, 144 F(2) 189 29
McCullough v. Maryland, 4 Wheat. 316 ..... 10, 35
Metropolitan Water Dist. v. Riverside Co., 21 Cal. (2) 640 5, 27
Moody v. Provident, 12 Cal. (2) 389 ..... 14, 34
Mugler v. Haus, 123 U. S. 623 32
Murray v. Charleston, 96 U. S. 432 32

Pollock v. Farmers L. & T. Co., 158 U. S. 601 35
Provident v. Zumwalt, 12 Cal. (2) 365 ..... 21, 27, 38
Pryor v. Goza, 172 Miss. 46 32

Selby v. Oakdale, 140 C. A. 171 ..... 21, 33, 38
Shamberg v. Port of N. Y. Authority, 144 F(2) 998 35
Shouse v. Quinley, 3 Cal. (2) 357 ..... 31, 33
Southern Sierras Power Co. v. Imperial Irr. Dist., 85 F(2) 1019 6
Spellings v. Dewey, 122 F(2) 652 ..... 25, 37
Spencer v. Merchant, 125 U. S. 352 32

Thompson v. Perris I. D., 116 Fed. 769 33

U. S. v. Bekins, 304 U. S. 27 ..... 3, 10

von Hoffman v. Quincy, 4 Wall. 535 31

W. J. Somers v. Smith, 45 C. A. 703 40
Ware v. Crummer, 128 F(2) 114 25
Wells Fargo Bank & Union Trust Co. v. Imperial Irr. Dist. No. 310, Oct. Term, 1943 4
Wells Fargo v. Imperial, 136 F(2) 539 24
Wood v. Lovett, 313 U. S. 362 32
Worthen v. Kavanaugh, 295 U. S. 56 32
Wright v. Coral Gables, 137 F(2) 192, C.C.A. 5 ..... 6, 10, 24, 25

Statutes and Texts

Bankruptcy Act:
Section 64(a) 3
Sections 81-84 2
Section 83 3

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,
Petitioner,

vs.

IMPERIAL IRRIGATION DISTRICT (a political subdivision organized and existing under the laws of the State of California) and IMPERIAL IRRIGATION DISTRICT BONDHOLDERS' PROTECTIVE COMMITTEE,
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Supreme Court of the United States, and to the Honorable Chief Justice and Associate Justices Thereof:

The petitioner prays that a writ of certiorari issue to review the judgment (R. 35) of the United States

Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause on January 29, 1945, granting the Motion to Dismiss (R. 29) and sustaining the final decree (R. 9-12) of the District Court of the United States for the Southern District of California.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals (R. 35) is reported in 146 Fed. (2)1002. The order of the District Court (R.9) dated October 30, 1944, is unreported.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U.S.C.A. section 347(a).

STATUTES INVOLVED.

California Irrigation District Act of 1897, Cal. Stats. 1897, p. 254 as amended.

11 U.S.C.A. 410-404 (52 Stat. 940) of June 22, 1938, adding Sections 81-84 to the Bankruptcy Act of 1898, as amended.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

The matter involved is whether the fiscal affairs of a State, and its agency, and the substantive and procedural rights of a holder of valid and binding bonds, are governed and controlled by Federal or State law and decisions, and whether the Congress has authorized its Courts to issue orders in cases arising under Sec. 83 of the Bankruptcy Act that contravene the provisions of Sec. 64(a) and also of 28 U.S.C. 41(1), sub. (3), and the legal and practical effect of the final decree to the particular situation presented by the record in this case, and decisions.

The constitutionality of Section 83 has been passed upon by this court in *U. S. v. Bekins,* 304 U.S. 27. But, nothing said in that case modified or reversed the fundamental principle of constitutional law announced in the *Ashton v. Cameron County,* 298 U.S. 513 case, and in the *Brush v. Comm.,* 300 U.S. 352, 366-369 case which affirmed that respondent is a Political Subdivision of the State, exercising governmental powers and duties, exclusively, and therefore can not have extended to it the privilege of voluntary abrogation of its statutory taxing duties, in a composition proceeding, or forced upon it involuntary bankruptcy proceedings. A long settled principle of constitutional law, i.e., the doctrine of immunity, is not overruled by implication, and denial of petitions for a writ of certiorari are not tantamount to the reversal of a clear and unequivocal opinion by this court which affirmed the immunity of a political sub-

division of a State from the scope of the Federal bankruptcy power.

Nothing contained in the interlocutory decree served to release respondent from its mandatory statutory taxing duties, and therefore no question of impairment of vested rights could be raised by petitioner as an actual controversy in that appeal. (*Wells Fargo Bank & Union Trust Co. v. Imperial Irr. Dist.* No. 310, Oct. Term, 1943.)

The deprivation of property rights of petitioner only arose in the final decree (R. 9) which "cancelled, annulled and discharged" the statutory obligation embodied in the bonds owned by petitioner, and which "forever restrained and enjoined (petitioner) from otherwise asserting any claim or demand whatsoever".

This appeal is from the final decree. By proper specification of error and statement of points, petitioner sought a reversal of the decree (R. 16).

Respondent is a political subdivision (not a municipal corporation) of the State of California, organized and existing under the laws of California, with powers and duties prescribed in Stats. 1897, p. 254, and amendments thereto. Among the powers delegated by the State to respondent is the sovereign power to levy, collect and enforce direct taxes upon the value of all privately held land (rural and urban) in its boundaries without limitation as to rate or time, and to pledge the faithful exercise of that delegated sovereign power to any extent necessary to keep alive and fulfill its contractual obligations. Further-

more, respondent is authorized and required to administer land which is more than three years tax delinquent as a beneficent landlord, and to collect its full rental value, or as much of it as may be necessary to keep alive and to repay money borrowed. Such land is held by the highest State court to be land belonging to the State, designated a public trust, and dedicated to the uses and purposes of the Act, among which purposes is the repayment of borrowed money. Being land owned by the State, it is not subject to taxation by a county, city or other tax unit, and thus the law differs basically from the rule applicable, when county or city taxes are also delinquent upon the same land. (*Metropolitan Water District v. Riverside County,* 21 Cal. (2) 640; *Fallbrook P. U. Dist. v. Cowan,* 131 F(2) 513, C.C.A. 9, certiorari denied.)

In the exercise of the borrowing and taxing powers delegated by the State of California to respondent, there were outstanding in 1932 $14,250,000 general obligation bonds, and $884,713.89 of warrants.

Because certain private holders of land-titles failed, refused and neglected to pay the taxes levied by respondent, when due, there was a temporary deficit, and without waiting to see how many land holders would pay up within the three-year period allowed by law for redemption, respondent adopted the so-called Refunding Plan of 1932, which involved certain regressive amendments enacted in 1931 that would make refunding bonds, issued thereafter, less desirable in the opinion of petitioner. Otherwise, this 1932 Plan provided for the issuance of refund-

ing bonds, par for par, with certain concessions of interest for a four-year period, January 1, 1932, to January 1, 1936.

Before this 1932 refunding operation was completed, Section 80 of the Bankruptcy Act was enacted September 10, 1934, and respondent filed a petition under that section to bludgeon the holders of original bonds, including petitioner, into an acceptance of the 1932 scheme. The District Court approved that Plan on August 2, 1935. The holders of original, unrefunded bonds, including petitioner here, appealed from said decree to the Circuit Court of Appeals for the Ninth Circuit, which Court on November 2, 1936, reversed the decree of the District Court and directed a dismissal. (*Southern Sierras Power Co. v. Imperial Irr. Dist.*, 85 F(2)1019; rehearing denied, 87 F(2) 355.)

Those who had agreed to accept refunding bonds under the 1932 proposal did not, on the dismissal of the bankruptcy petition, seek a return of their original bonds then, or at any subsequent date.

The instant proceeding rests on a petition filed April 24, 1939, under Section 83, and is based on the consents of the holders of bonds which had been refunded under the 1932 operation, who would be less adversely affected than the holders of original, unrefunded bonds. Thus a clear conflict arises with the *Wright v. Coral Gables*, 137 F(2)192 C.C.A. 5, case, which was affirmed by this Court March 13, 1944. Also with *In re Town of Deerfield Beach, Fla.*, 55 F. Supp. 761 in which the Court said:

> "Where it is sought to count consents of creditors who have accepted refunding bonds under a partially executed plan of arrangement as consents to plan proposed in petition, the original plan on which a refunding did occur and the bankruptcy plan must be the same."

The effect of the instant plan is to require a greater abnegation of property belonging to petitioner, as owner of original, unrefunded bonds, than from the assenters who were, at the time their consents to this petition were procured, the holders of refunding bonds which had been accepted by them under the provisions in the 1932 proposal. In other words "the original plan on which a refunding did occur and the bankruptcy plan" are not the same in the instant case.

The 1939 Plan compels those who did not refund under the 1932 proposal to accept settlement now, the same as though their original bonds had then been voluntarily exchanged for the refunding bonds. No such taking of property is involved from those who accepted the refunding bonds before the 1939 Plan of Composition was presented to the Court, and the provision in Section 83, sub. (j) was never intended to extend to a situation of the sort here involved.

Petitioner was given no notice before entry of the final decree, and filed his objections (R. 16) in the appeal to the Circuit Court of Appeals. Prior to the printing of the Record, respondent gave notice of a Motion to Dismiss (R. 29), on the contention that the Circuit Court in its opinion of April 23, 1943, had

"finally adjudicated each and every point raised by appellant in this purported appeal" (R. 30). The principal points on which petitioner relied in his appeal from the final decree were not raised in the appeal from the interlocutory decree, especially points Nos. 2 to 6. Respondent offered no opinion by this Court settling the points therein raised, while point No. 1 was passed upon by this Court contrary to interpretation of sub. (j) in the instant case.

QUESTIONS PRESENTED.

1. The District Court erred in entering the final decree because the bonds owned by appellant (petitioner here) are original, unrefunded bonds which the plan affects more adversely than the refunded bonds which formed the base for the consents to the (1939) plan of composition.

2. Because Chapter IX is a special exercise of the Bankruptcy Act making creditor consent a requisite of jurisdiction and because the consenting bonds were all paid, retired, cancelled and annulled before motion for the final decree was filed, the creditor consent upon which the jurisdiction of the District Court depended ceased to exist after the cancellation of the consenting obligations, and the decree below having been signed long thereafter, it is a nullity.

3. The District Court erred in entering the final decree because it has no summary jurisdiction to deal with a controversy to State property of which the Court has neither actual nor constructive possession.

4. The legislature of a State can not, after executing a trust conferred on it by the Constitution, and after borrowing money upon the pledge to repay the money borrowed in conformity with the law, subsequently repudiate its contracts nor consent for the federal government to order the contracts annulled without violating Article I, Section 10 of the Federal, and Article I, Section 16 of the California Constitution.

5. The final decree, as applied, deprives appellant of the vested property rights embodied in the original, unrefunded and non-callable bonds owned by appellant (petitioner) in violation of the Fifth and Fourteenth Amendments of the Federal Constitution, which guarantees appellant (petitioner) the right to have the taxes on the value of land levied annually, as required by law and as firmly settled by the highest State Court.

6. The District Court erred in issuing the final decree without notice.

7. Whether the death sentence and restraints in the final decree are repugnant to the Federal and State Constitutions.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

(1) In affirming the final decree of the District Court, on a motion to dismiss.

(2) In failing to rule upon the points raised in the appeal, as above.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

This case presents questions involving fundamental principles of constitutional law of vital importance to the survival of the doctrine of immunity, as that doctrine has been steadfastly adhered to by this Court in all cases which raised the question squarely.

It is settled that interest received by petitioner from the bonds at bar is immune and exempt from the federal income tax laws. (72 Op. A.G. 38 (1937).)

If it is repugnant to the Constitution to deprive petitioner of a portion of the interest from the bonds at bar, under the Tax Clause, *a fortiori* reason indicates that it is equally repugnant to deprive petitioner of all the interest from and principal of the same bonds, under the Bankruptcy Clause, as applied in the final decree.

This Court has never held that the Tax Clause ranks inferior in dignity and importance to the Bankruptcy Clause, with respect to the same property, but will not that be the rule in legal and practical effect if the final decree here appealed from is allowed to stand?

The decision of the Circuit Court of Appeals in the instant case also conflicts with decisions of other Circuit Courts of Appeals, sustained by this Court in *Wright v. Coral Gables,* supra, and with the doctrine of immunity as steadfastly adhered to by this Court from *McCulloch v. Maryland,* 4 Wheat. 316 to *Brush v. Commissioner,* 300 U.S. 352, 366-369 and *Faitoute v. Asbury Park,* 316 U. S. 502, 508, and not repudiated in *U. S. v. Bekins,* 304 U.S. 27, nor since.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and proceedings in the case of *J. R. Mason v. Imperial Irrigation District,* No. 10,957 and that the judgment of the United States Circuit Court of Appeals for the Ninth Circuit be reversed by this Honorable Court and that the final decree of the United States District Court for the Southern District of California be reversed, and for such other and further relief in the premises as to this Honorable Court may seem meet, just and proper.

Dated, San Francisco, California,
April 23, 1945.

J. R. MASON,
Petitioner in Propria Persona.